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SPECIAL CIVIL APPLICATION NO.9181 OF 1995

Date of decision: 19.2.1996

FOR APPROVAL AND SIGNATURE:

THE HON'BLE MR. JUSTICE R.K. ABICHANDANI

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANBAI KANJI MAHESHWARI

vs

VIMLABEN ARJAN MAHESHWARI

Appearance:

Mr. Rajesh C. Kakkad, Advocate, for the petitioner.

Mr. Y.S. Mankad, Advocate, for respondent No. 1

Ms. Harsha Devani, A.G.P. for respondents Nos. 2 and 3.

Mr. Lathighara for respondent No. 4 and 5.

Coram : MR.JUSTICE R.K.ABICHANDANI

Date: 19.2.1996

ORAL JUDGEMENT:

Rule. Mr. Y.S. Mankad waives service of rule on behalf of the respondent No. 1. Ms. Harsha Devani, A.G.P. waives service of rule for respondents Nos. 2 and 3. Mr. Lathigara

waives service of rule on behalf of respondents Nos. 4 and 5. At the instance of all the learned counsel the matter is taken up for final disposal.

The petitioner challenges the order dated 21.9.1995 of the learned Civil Judge (J.D.) passed on application Exh. 5 in election petition No. 1 of 1995 by which the learned Civil Judge issued an injunction restraining the petitioner from functioning as Sarpanch of the panchayat until disposal of the election petition. It was contended on behalf of the petitioner that the learned Civil Judge (J.D.) hearing the election petition was not empowered to grant interim injunction restraining the petitioner from occupying his office or functioning as Sarpanch. In support of this submission, the learned counsel relied on the decision of this Court in Letters Patent Appeal No. 121 of 74 and other cognate matters in which dealing with an identical situation under the provisions of Section 24(1) of the Gujarat Panchayats Act, 1961, it was held that the scheme of the said Act showed that the person who is declared elected has a statutory right to attend the meeting of the panchayat and vote therein and court cannot in any manner touch his statutory rights until his election is set aside. It was held that in view of the scheme of the said Act no interim relief could be granted restraining the elected Sarpanch from occupying his office pending hearing of the application challenging the validity of the election. The interim order which has been made by the learned Civil Judge (J.D.) is in direct conflict with the ratio of the decision of the Division Bench of this Court and cannot be sustained. The impugned order is therefore set aside. Rule is made absolute accordingly with no order as to costs. It is directed that the election petition which is pending before the learned Civil Judge should be expeditiously heard and disposed of preferably within one month from the date on which the writ of this order is received.

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